# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CFIRSTCLASS CORPORATION,

Plaintiff,

07 Civ. 6371 (SHS)

- against -

SILVERJET PLC,

Defendant.

# TABLE OF CONTENTS AND AUTHORITIES TO MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

MORRISON & FOERSTER LLP Karen L. Hagberg Geoffrey C. Upton 1290 Avenue of the Americas New York, New York 10104 (212) 468-8000

Attorneys for Defendant Silverjet plc

# TABLE OF CONTENTS

			Page
PREI	LIMINA	ARY STATEMENT	1
STAT	ГЕМЕР	VT OF RELEVANT FACTS	2
ARG	UMEN	Т	3
I.	THE	HAS NO CLAIMS IN THIS COURT AGAINST SILVERJET BECAUSE CONTRACTS' BROAD FORUM SELECTION CLAUSE SHOULD BE ORED	4
II.	ADV	FAILS TO STATE A CLAIM FOR TORTIOUS INTERFERENCE WITH ANTAGEOUS BUSINESS RELATIONSHIP (COUNT I) OR CONTRACT JNT II)	
	A.	CFC Fails to State a Claim for Tortious Interference with Advantageous Business Relationship	8
	B.	CFC Fails to State a Claim for Tortious Interference with Contract	11
III.	CFC	FAILS TO STATE A CLAIM FOR UNJUST ENRICHMENT	16
CON	CLUSI	ON	18

Page
CASES
AIM Int'l Trading, L.L.C. v. Valcucine S.p.A., 02 Civ. 1363 (PKL), 2003 U.S. Dist. LEXIS 8594, 2003 WL 21203503 (S.D.N.Y. May 22, 2003)
Am. Bldg. Maint. Co. v. ACME Prop. Servs., 2007 U.S. Dist. LEXIS 64051 (S.D.N.Y. August 29, 2007)11
Am. Honda Motor Co. v. Motorcycle Info. Network Inc., 390 F. Supp. 2d 1170 (M.D. Fla. 2005)
Am. Protein Corp. v. AB Volvo, 844 F.2d 56 (2d Cir. 1988)
Antonios A. Alevizopoulos & Assocs. v. Comcast Int'l Holdings, Inc., 100 F. Supp. 2d 178 (S.D.N.Y. 2000)11
Baron v. Pfizer, Inc., 2007 NY Slip Op 5813 (N.Y. App. Div. 2007)
Benton v. Kennedy-Van Saun Mfg. & Eng. Corp., 2 A.D.2d 27 (N.Y. App. Div. 1956)14
Bradkin v. Leverton, 26 N.Y.2d 192 (N.Y. 1970)16
Burger King Corp. v. Ashland Equities, Inc., 161 F. Supp. 2d 1331 (S.D. Fla. 2001)9
Camp Summit of Summitville, Inc. v. Visinski, 2007 U.S. Dist. LEXIS 28496 (S.D.N.Y. April 13, 2007)
Chambers v. Time Warner, Inc., 282 F.3d 147 (2d Cir. 2002)
Charles W. v. Maul, 214 F.3d 350 (2d Cir. 2000)
Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 N.Y.2d 382, 516 N.E.2d 190, 521 N.Y.S.2d 653 (N.Y. 1987)
Clifford R. Gray, Inc. v. Le Chase Constr. Servs., LLC, 2006 NY Slip Op 5850 (N.Y. App. Div. 2006)
Coastal Steel Corp. v. Tilghman Wheelabrator, Ltd., 709 F.2d 190 (3d Cir. 1983)5
Conocophilips v. 261 E. Merrick Rd. Corp., 428 F. Supp. 2d 111 (E.D.N.Y. 2006)

	Page
Crossland Inv. Co. v. Rhodes, 274 F. Supp. 2d 1302 (N.D. Fla. 2003)	13
Direct Mail Prod. Servs. v. MBNA Corp., 2000 U.S. Dist. LEXIS 12945 (S.D.N.Y. September 7, 2000)	4, 6, 7
E2-Capital Inv. v. Auerbach, Pollak & Richardson, 2003 U.S. Dist. LEXIS 4318 (S.D.N.Y. March 18, 2003)	9
E.F. Hutton Int'l Assoc. Ltd. et al. v. Shearson Lehman Bros. Holdings, Inc., 281 A.D.2d 362 (N.Y. App. Div. 2001)	15
Ernie Haire Ford, Inc. v. Ford Motor Co., 260 F.3d 1285 (11th Cir. 2001)	13
Ethan Allen v. Georgetown Manor, 647 So. 2d 812 (Fla. 1994)	8
Farah v. Canada, 740 So. 2d 560 (Fla. 5th DCA 1999)	12
Fine Foods Int'l, L.P. v. North Am. Fine Foods Inc., 1999 U.S. Dist. LEXIS 20007 (S.D.N.Y. Nov. 12, 1999)	8
Foster v. Churchill, 87 N.Y.2d 744 (N.Y. 1996)	11
Gebhardt v. Allspect, Inc., 96 F. Supp. 2d 331 (S.D.N.Y. 2000)	3
Goldman v. Metro Life Ins. Co., 5 N.Y.3d 561 (N.Y. 2005)	16
Guard-Life Corp. v. S. Parker Hardware Mfg. Corp., 50 N.Y.2d 183, 406 N.E.2d 445, 428 N.Y.S.2d 628 (N.Y. 1980)	9
Harris v. City of New York, 186 F.3d 243 (2d Cir. 1999)	3
Heavener, Ogier Servs. v. R. W. Fla. Region, 418 So. 2d 1074 (Fla. Dist. Ct. App. 1982)	15
Honess 52 Corp. v. The Town of Fishkill, 1 F. Supp. 2d 294 (S.D.N.Y. 1998)	3
Hugel v. Corporation of Lloyd's, 999 F.2d 206 (7th Cir. 1993)	5, 6
<i>IBM v. Liberty Mut. Ins. Co.</i> , 363 F.3d 137 (2d Cir. 2004)	7

Page
Imtrac Indus. v. Glassexport Co., 1996 U.S. Dist. LEXIS 1022 (S.D.N.Y. February 1, 1996)15
In re Lloyd's Am. Trust Fund Litig., 954 F. Supp. 656 (S.D.N.Y. 1997)6
Inn Chu Trading Co. v. Sara Lee Corp., 810 F. Supp. 501 (S.D.N.Y. 1992)16
Israel v. Wood Dolson Co., 1 N.Y.2d 116 (N.Y. 1956)11
Johnson Enters. of Jacksonville v. Fpl Group, 162 F.3d 1290 (11th Cir. 1998)11, 15
Johnson & Johnson v. Guidant Corp., 2007 U.S. Dist. LEXIS 64114 (S.D.N.Y. August 29, 2007)
Klein v. Jostens, 1985 U.S. Dist. LEXIS 18115 (S.D.N.Y. July 9, 1985)
Koret, Inc. v. Christian Dior, S.A., 161 A.D.2d 156 (N.Y. App. Div. 1990)
Lama Holding Co. v. Smith Barney Inc., 88 N.Y.2d 413 (N.Y. 1996)12
Lambert v. Kysar, 983 F.2d 1110 (1st Cir. 1993)5
M.J. & K. Co. v. Matthew Bender & Co., 220 A.D.2d 488 (N.Y. App. Div. 1995)10
Maritime Ins. Co. v. M/V Sea Harmony, 97 Civ. 3818, 1998 U.S. Dist. LEXIS 6294, 1998 WL 214777 (S.D.N.Y. May 1, 1998) 6
Martin v. Thermo Electron Corp., No. 99-2547, 2001 U.S. Dist. LEXIS 24812 (S.D. Fla. Jan. 16, 2001)
Masefield AG v. Colonial Oil Indus., 05 Civ. 2231, 2006 U.S. Dist. LEXIS 5792 (S.D.N.Y. Feb. 15, 2006)
Matrix Group Limited, Inc. v. Rawlings Sporting Goods Co., 477 F.3d 583 (8th Cir. 2007)8
Mercury West A.G., Inc. v. R.J. Reynolds Tobacco Co., No. 03 Civ. 5262 (JFK), 2004 WL 421793 (S.D.N.Y. Mar. 5, 2004)

	Page
Millar v. Ojima, 354 F. Supp. 2d 220 (E.D.N.Y. 2005)	11
New Moon Shipping Co. v. MAN B & W Diesel AG, 121 F.3d 24 (2d Cir. 1997)	3
Record Club of Am., Inc. v. United Artists Records, Inc., 611 F. Supp. 211 (S.D.N.Y. 1985)	15
Risley v. Rubin, 272 A.D.2d 198, 708 N.Y.S.2d 377 (N.Y. App. Div. 2000)	11
Roby v. Corp. of Lloyd's, 996 F.2d 1353 (2d Cir. 1993)	4
Rohrbaugh v. United States Mgmt., 2007 U.S. Dist. LEXIS 47978 (E.D.N.Y. July 2, 2007)	3
Ruha v. Guior, 277 A.D.2d 116 (N.Y. App. Div. 2000)	16
Scutti Enter. LLC v. Park Place Entm't., 322 F.3d 211 (2d Cir. 2003)	11
Sealord Marine Co. v. Am. Bureau of Shipping, 220 F. Supp. 2d 260 (S.D.N.Y. 2002)	6
Sedona Corp. v. Ladenburg Thalmann & Co., 2005 U.S. Dist. LEXIS 16382 (S.D.N.Y. Aug. 9, 2005)	11
Shea v. Hambro Am., 200 A.D.2d 371 (N.Y. App. Div. 1994)	15
Stewart Org., Inc. v. Ricoh Corp., 810 F.2d 1066 (11th Cir. 1987)	5
TVT Records v. Island Def Jam Music Group, 412 F.3d 82 (2d Cir. 2005)	12
Taylor, Bean & Whitaker Mortgage Corp v. GMAC Mortgage Corp., No. 5:05-cv-260-Oc-10GRJ, 2006 U.S. Dist. LEXIS 39728 (M.D. Fla. June 15, 2006).	16
Terra Int'l Inc. v. Mississippi Chem. Corp., 119 F.3d 688 (8th Cir. 1997)	
Textiles Network v. DMC Enters., 07 Civ. 393, 2007 U.S. Dist. LEXIS 64247 (S.D.N.Y. Aug. 31, 2007)	
United Magazine Co. v. Murdoch Magazines Distrib., 146 F. Supp. 2d 385, (S.D.N.Y. 2001)	

	Page
United States Fid. & Guar. Co. v. Petroleo Brasileiros S.APetrobras, No. 98 Civ. 3099 JGK, 2001 WL 300735 (S.D.N.Y. Mar. 27, 2001)	4
United Wis. Servs. V. Abbott Labs (In re Terazosin Hydrochloride Antitrust Litig.), 220 F.R.D. 672 (S.D. Fla. 2004)	17
Universal Marine Med. Supply, Inc. v. Lovecchio, 8 F. Supp. 2d 214 (E.D.N.Y. 1998)	8
<i>WMW Mach. Co. v. Koerber AG</i> , 240 A.D.2d 400 (N.Y. App. Div. 1997)	10
Warnaco Inc. v. VF Corp., 844 F. Supp. 940 (S.D.N.Y. 1994)	5
Weingrad v. Telepathy, Inc., No. 05 Civ. 2024 (MBM), 2005 WL 2990645 (S.D.N.Y. Nov. 7, 2005)	5
Wells v. Marton, 794 F. Supp. 1092 (S.D. Fla. 1991)	8
Wolff v. Rare Medium, Inc., 210 F. Supp. 2d 490 (S.D.N.Y. 2002)	14
Zinermon v. Burch, 494 U.S. 113 (1990)	3
RULES AND OTHER AUTHORITIES	
Fed. R. Civ. P. 12(b)(1)	1, 3
Fed. R. Civ. P. 12(b)(6)	1, 3, 10
Wright & Miller, Federal Practice & Procedure: Civil 3d § 1357	3

Dated: October 18, 2007 New York, New York

Respectfully submitted, MORRISON & FOERSTER LLP

/s/Geoffrey C. Upton
By: Karen L. Hagberg
Geoffrey C. Upton
1290 Avenue of the Americas
New York, New York 10104 (212) 468-8000

Attorneys for Silverjet plc